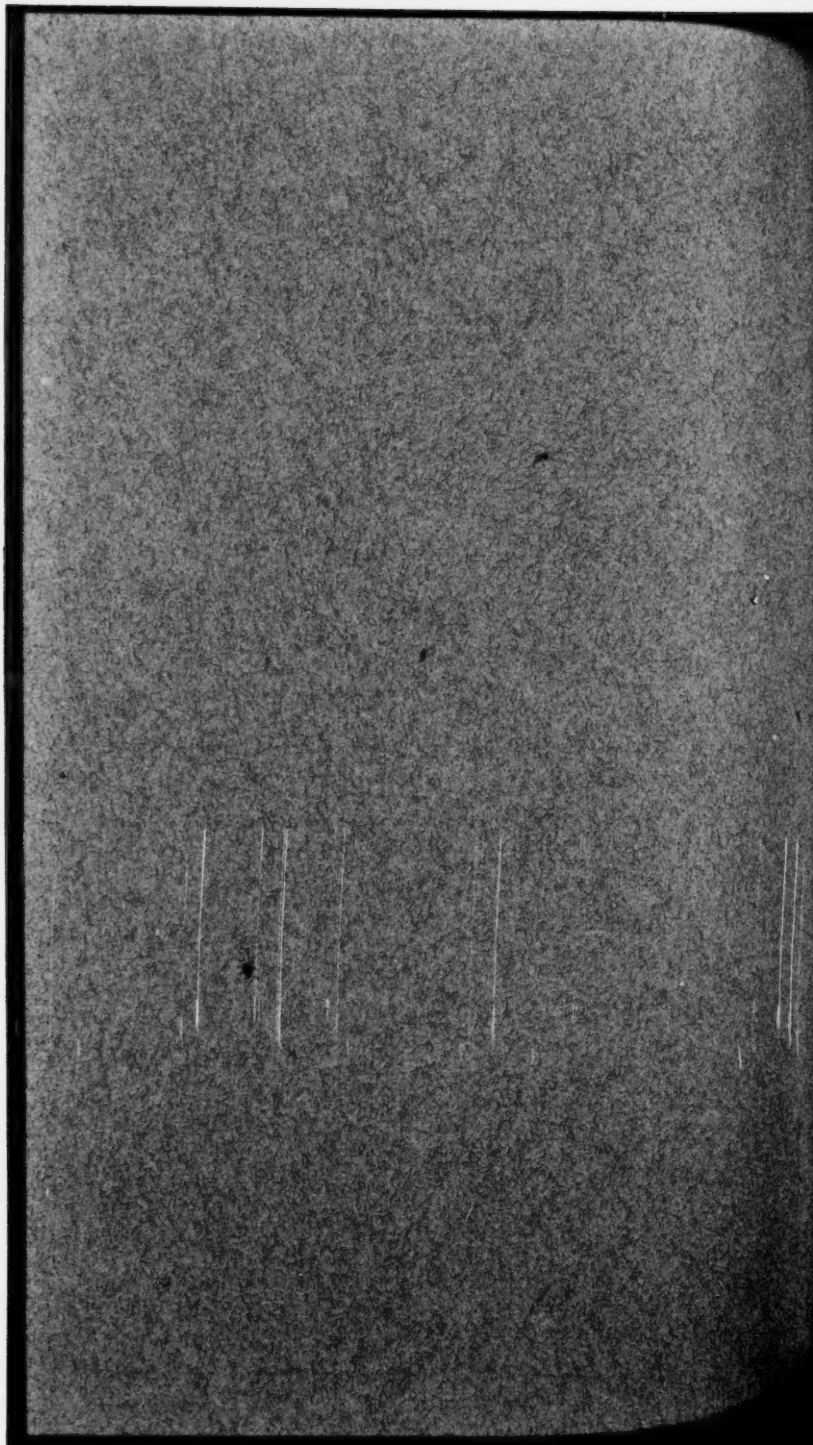

No. 178

20860

Supreme Court of the United States.

No. 484

Filed Mar. 29, 1900.

TURRET STEAM SHIPPING COMPANY, LIMITED,

vs.

A. G. HALL ET ALS., LIBELLANTS, PETITIONERS,

AND

THE BOSTON FRUIT COMPANY.

MOTION FOR EXECUTION AGAINST CLAIMANT OF THE STEAMSHIP "BARNSTABLE."

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States.

The Petition of A. G. HALL ET ALS., owners of the late schooner "Fortuna," Libellants, ARTHUR W. NUNAN, Petitioner, HAROLD EMENAN ET AL., Administrators, Petitioners, and ISAAC B. STEWART, Administrator, Petitioner,

Respectfully shows unto the Court as follows:

First: These proceedings were commenced by the libel of A. G. Hall and others against the steamship "Barnstable," and intervening petitions were filed by Arthur W. Nunan and by Harold Emenan et al., and by Isaac B. Stewart. A decree was entered in the District Court in favor of all the parties against the steamship "Barnstable."

Second: The claimant of the steamship "Barnstable" admits that it is responsible to these petitioners, and the only question involved in the case at the present time is whether or not they can make the Boston Fruit Company jointly responsible.

Third: No appeal has ever been taken by either party from the decree in favor of these petitioners, but the petitioners are unable to obtain a mandate from the Circuit Court of Appeals or an execution in the United States District Court, because the writ for certiorari having been granted to this Court, the whole case is before this Court.

Fourth: Prior to the application for certiorari to this Court, your petitioners moved in the Circuit Court of Appeals for the First Circuit, that a mandate should issue in their behalf against the claimant of the steamship "Barnstable," on the ground that no appeal had been taken from the decree in their favor; but the Court refused to issue the mandate until it was determined whether the writ of certiorari would be issued or not, and upon the issuance of that writ the Court had no further jurisdiction in the matter.

Fifth: The counsel for the owner of the steamship "Barnstable" and the counsel for the Boston Fruit Company by their petition for certiorari and their answer to the same, both admit that your petitioners are entitled in any event to recover the full amount of the decree with interest and costs from the claimant of the steamship "Barnstable;" but the owner of the steamship "Barnstable" is unwilling to pay the amount due to your petitioners without an order of Court for fear it may prejudice its rights as against the Boston Fruit Company in this Court.

WHEREFORE, your Petitioners pray that an order may issue to the Circuit Court of Appeals for the First Circuit, ordering it to issue a mandate in favor of your petitioners against the steamship "Barnstable" to the United States District Court for the District of Massachusetts, affirming the decree of that Court as against the claimant, the owner of the steamship "Barnstable," and its sureties, and ordering the District

Court to issue execution in favor of your petitioners against the claimant of the steamship "Barnstable" therefor; without prejudice to the rights of the claimant of the steamship "Barnstable," to proceed in this Court against the Boston Fruit Company, and to have the decree of the District Court reversed, if this Court deem proper, in so far as the Boston Fruit Company and the claimant of the steamship "Barnstable" are concerned.

A. G. HALL ET ALS., LIBELLANTS-PETITIONERS.

By CARVER & BLODGETT, THEIR PROCTORS.